No. 14-940

Supreme Court, U.S.
FILED
SEP 25 2015
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

SUE EVENWEL, *et al.*,

Appellants,

v.

GREG ABBOTT, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

BRIEF OF *AMICUS CURIAE* CARL E. HEASTIE IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE NEW YORK STATE ASSEMBLY IN SUPPORT OF APPELLEES

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Dated: September 2015

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QUESTION PRESENTED

Is Citizen Voting Age Population the only constitutional metric by which state legislative districts can be apportioned?

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INTEREST OF THE *AMICUS CURIAE*

Carl E. Heastie is Speaker of the New York State Assembly. As such, he is the legislative leader of the Assembly, one of two houses of New York's bicameral State legislature. Speaker Heastie respectfully submits this *amicus* brief in his official capacity on behalf of the New York State Assembly.[1]

New York has a substantial immigrant population. As of 2014, New York was one of six states which together account for 60% of unauthorized immigrants in the United States. Jens Manuel Krogstad and Jeffrey S. Passel, *"5 facts about illegal immigration in the U.S."* Pew Research Center, Washington, D.C., July 24, 2015, *http://www.pewresearch.org/fact-tank/2015/07/24/5-facts-about-illegal-immigration-in-the-u-s/*. In addition, there are numerous documented immigrants resident in New York State. New York has enacted a host of legislation providing rights and services to its documented immigrant population (*see* Appendix A), as well as to its undocumented immigrant population (*see* Appendix B). The case is of interest to the New York State Assembly because the Assembly is concerned with the preservation

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1. Pursuant to this Court's Rule 37.2(a), all parties have consented to the filing of this brief. The blanket consents of Appellants and Appellees to the filing of *amicus* briefs has been noted on the docket by the Clerk of the Court.

Pursuant to this Court's Rule 37.6, *Amicus Curiae* affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amicus Curiae* or his counsel made a monetary contribution to the brief's preparation or submission.

and advancement of the rights and protections of the State's immigrant population.

SUMMARY OF ARGUMENT

Aliens are persons within the meaning of the Constitution and enjoy constitutional rights and protections. Excluding aliens from the population base from which state legislative districts are constructed would deny them constitutional rights guaranteed under the First and Fourteenth Amendments by effectively denying them access to government. Notwithstanding the fact that aliens cannot vote, they are persons with a stake in government. In a representative democracy as embodied in our Constitution, the government acts on behalf of the people. And people cannot be adequately represented if they are unable to make their wishes known to their representatives. *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 137 (1961). Eliminating non-citizens from the apportionment metric will debase their political capital. Representatives will have no incentive to advocate for immigrants if they are not even considered in the constituent base. The current political discourse in the United States leaves no doubt that this is a particularly perilous time for immigrants.

The choice whether to include or exclude non-citizens from the apportionment base is one left to the states. States are free to choose the metric by which their internal districts are apportioned so long as the metric is a constitutional one. *Burns v. Richardson*, 384 U.S. 73, 92 (1966). The Constitution, in the Fourteenth Amendment, prescribes total population as the basis for apportioning Congressional districts. The notion that it

is unconstitutional for a state to choose a population base that the Constitution itself countenances defies logic.

Constructing districts on the basis of Citizen Voting Age Population ("CVAP") will adversely impact New York's minority population. Excluding non-citizens from the districting base results in fewer persons available to populate each district. Since the Voting Rights Act mandates that a cohesive, compact minority population be aggregated into a single district, the absence of non-citizens to fill out district population in minority communities results in the retrogressive outcome of fewer minority districts. In fact, the elimination of non-citizens from New York's districting base would harm minorities protected by the Voting Rights Act by significantly diminishing their voting strength to the benefit of the white majority population.

INTRODUCTION

Immigrants comprise a substantial portion of the population of the United States. The Department of Homeland Security reports that on January 1, 2013 there were an estimated 13.1 million lawful permanent resident aliens in the United States. Byran Baker and Nancy Rytina, *Estimates of the Lawful Permanent Resident Population in the United States: 2013*, Office of Immigration Statistics, Policy Directorate, U.S. Department of Homeland Security (September 2014), available at *http://www.dhs.gov/publication/estimates-lawful-permanent-resident-population-213*, at 3. In addition, Pew Research Center puts the number of illegal aliens in the United States in 2014 at 11.3 million. Pew, *supra*, at 2146. Thus, the Court's determination in this case will impact nearly 25 million people.

ARGUMENT

I. Aliens are Accorded Extensive Constitutional Rights and Protections

For more than a century, this Court has recognized aliens as "persons" within the meaning of the Constitution and accorded them constitutional rights and protections. *Yick Wo v. Hopkins*, 118 U.S. 356, 368 (1886) (Petitioners' "rights [under the Constitution] . . . are not less because they are aliens. . . ."). *Accord*: *Plyler v. Doe*, 457 U.S. 202, 210 (1982) ("Whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the *Fifth* and *Fourteenth* Amendments."); *Wong Wing v. U.S.*, 163 U.S. 228, 238 (1896) ("all persons within the territory of the United States are entitled to the protection guaranteed by [Constitutional] amendments . . . even aliens. . . .").

Thus, a vast breadth of constitutional protections are accorded to aliens. E.g., *Benal v. Fainter*, 467 U.S. 216 (1984) (holding statute denying aliens the opportunity to become notaries public violative of Equal Protection clause of Fourteenth Amendment); *Plyler*, supra (invalidating under Fourteenth Amendment state statute denying undocumented alien children enrollment in public school); *Nyquist v. Mauclet*, 432 U.S. 1 (1977) (holding unconstitutional state statute denying state financial assistance for education to aliens); *Sugarman v. Dougall*, 413 U.S. 634 (1973) (invalidating statute prohibiting employment of aliens as state civil servants); *In re Griffiths*, 413 U.S. 717 (1973) (declaring unconstitutional

state prohibition of aliens from taking bar examination); *Graham v. Richardson*, 403 U.S. 365 (1971) (striking on constitutional grounds state statute imposing minimum residency requirements for welfare benefits for aliens).

Indeed, this Court has long held that classifications by a state based on alienage are "inherently suspect and subject to close judicial scrutiny." *Graham*, 403 U.S. at 372; *Mathews v. Diaz*, 426 U.S. 67 (1976); *Wong Wing*, *supra*.

II. The Exclusion of Aliens from the Population Base Upon Which Districts are Drawn Denies Them Their Constitutional Right to Access to Government

Appellants' insistence that the only constitutionally sound base for the construction of voting districts is CVAP ignores, and may well jeopardize, the constitutional rights of aliens, which this Court has zealously guarded. Under such a scenario, non-citizens' access to government would be severely undercut, if not rendered illusory.

This Court has recognized that "[i]n a representative democracy such as this [of the United States] . . . [the] branches of government act on behalf of the people and, to a very large extent, the whole concept of representation depends upon the ability of the people to make their wishes known to their representatives." *Eastern Railroad*, 365 U.S. at 137. And the "right to petition is an important corollary to the right to be represented. Non-citizens are entitled to various federal and local benefits . . . As such, they have a right to petition their government for services and to influence how their tax dollars are spent." *Garza v. County of Los Angeles*, 918 F.2d 763, 775 (9th Cir. 1990)

(citation omitted). Inasmuch as aliens are people under the Constitution, "[t]o refuse to count people [including aliens] in constructing a districting plan ignores these [constitutional] rights. . . ." Id.

The right to petition government is a classic constitutional right under the First and Fourteenth Amendments. The current political discourse underscores the peril aliens face today. As this Court has observed, "[r]esident aliens, like citizens, pay taxes, support the economy, serve in the Armed Forces, and contribute in myriad other ways to our society." *Griffiths*, 413 U.S. 722. Undocumented aliens also support the economy, contribute to our society and pay tax. If non-citizens are eliminated from the districting base, they will have lost their political capital and elected representatives will have no incentive to pay them heed. Aliens will be subject to taxation without representation in contravention of the fundamental tenet on which the Revolutionary War was fought and our nation was founded. Since aliens serve in the Armed Forces, they can be sent to theaters of war where they can be killed or maimed. Yet, this Court is being asked to give aliens no voice in respect to the decisions of elective representatives as to these and other matters which so profoundly impact them.

The issue is not *equal* access, as Appellants would have it. The analysis is whether, as a matter of the Constitution, aliens are entitled to *any* representational access. We do not assert that aliens have an entitlement to representational access equal to that of a citizen. Rather, we submit that aliens must be accorded some degree of access, even if not equal, so their voices will be heard on matters of critical impact. It would be entirely incongruous

to impose citizen-like burdens on aliens (taxation, military service) but to silence their representational voice in government. Allowing aliens to be part of the districting base would accord them at least a partial degree of government access which the Constitution affords them.

III. States are Accorded Latitude in Their Choice of an Apportionment Base

While it is true that *Burns v. Richardson*, 384 U.S.73 (1966), stands for the proposition that districts are not required to be apportioned on the basis of total population, *Burns* does not hold that total population cannot be a valid basis for districting, or that some other metric must be used instead. *Burns* unequivocally states:

> Neither in *Reynolds v. Sims* nor in any other decision has this Court suggested that the States are required to include aliens, transients, short-term or temporary residents, or person denied the vote for conviction of crime, in the apportionment base by which their legislators are distributed and against which compliance with the *Equal Protection Clause* is to be measured. *The decision to include or exclude any such group involves choices about the nature of representation with which we have been shown no constitutionally founded reason to interfere. Unless a choice is one the Constitution forbids, cf, e.g., Carrington v. Rash, 380 U.S. 89* [denying vote to state resident serviceman because he resided in another state at the time he joined the military], *the resulting apportionment base offends no constitutional*

> *bar, and compliance with the rule established in Reynolds v. Sims is to be measured thereby.*

Id. at 92 (emphasis added).

This Court thus has recognized the states' prerogative to include non-citizens in the population base from which districts are constructed so long as the Constitution is not offended. ("The decision to include . . . any such group involves choices about the nature of representation with which we have been shown no constitutionally founded reason to interfere." *Burns supra*); *see also Sugarman, supra* at 642-43 (recognizing "the state's broad power to define its political community"). Accordingly, a state's inclusion of non-citizens in the population base for districting is not *per se* unconstitutional.

Indeed, the Constitution explicitly recognizes total population as a valid measure by which electoral districts may be constructed, thus embodying representational equality. Section 2 of the Fourteenth Amendment, governing Congressional apportionment, states: "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed." The Fourteenth Amendment does not exclude aliens, minors or women (who did not have suffrage at the time of the adoption of the Fourteenth Amendment). Whatever the reasons that informed the adoption of the Fourteenth Amendment to read as it does, the fact remains that the Constitution constructs federal electoral districts on a total population basis. It is illogical to claim that the Fourteenth Amendment forbids that which the Fourteenth Amendment explicitly requires.

IV. CVAP is Not a Panacea and Its Use Will Have a Retrogressive Impact on New York's Minority Community

The thesis that CVAP-based districting will result in one citizen's vote carrying the same weight as that of another citizen, irrespective of district of residence, is ill founded. CVAP is but a subset of total population. It is, in essence, total population minus aliens and minors. But CVAP is not a measure of the population that actually votes. Even using CVAP, the weight accorded a voter residing in an apathetic district, where few people register or vote, is far greater than that of a voter in a politically active district where voter participation is high.

Using CVAP will have a retrogressive effect on New York's minority population, and likely those of other states as well. At present, non-citizens are included in the number of persons needed to comprise a district, as calculated in accordance with *Reynolds v. Sims*, 377 U.S. 533 (1964). If non-citizens are eliminated from the districting base, the denominator, i.e. the number of districts (150 in the New York Assembly), will remain constant, but the numerator, i.e. the population base, will shrink, resulting in fewer persons per district. Since the Voting Rights Act requires that cohesive compact minority populations be aggregated into a single district, *see Thornburg v. Gingles*, 478 U.S. 30 (1986), without aliens to fill out district population, the net result will be fewer Voting Rights districts, a retrogressive outcome inconsistent with the Voting Rights Act.

A direct consequence of compelling the use of CVAP for New York redistricting would be a significant decline in the voting strength of Voting Rights Act protected minorities to the benefit of the white majority population. As the chart below illustrates, Asians comprise more

than 8% of New York's total population, but as a share of citizens of voting age they make up less than 6%. As measured against CVAP, Hispanic population drops by five percentage points, from nearly 18% of the population as a whole to less than 13% of CVAP. And the percentage of Black population is 14.25% of CVAP, but over 15% of total population. By contrast, the white population jumps from 58% of total population to 66% of CVAP.

New York State Total and Citizen Voting Age Population Data Source: 2009-2013 American Community Survey				
	Total Population		CVAP	
Total	19,487,055	100.00%	13,313,630	100.00%
Asian	1,586,550	8.14%	789,175	5.93%
Black	2,943,655	15.11%	1,897,160	14.25%
White	11,306,475	58.02%	8,794,915	66.06%
Other	162,290	0.83%	109,665	.82%
Hispanic	3,488,085	17.90%	1,722,720	12.94%

Any argument predicated on purportedly analogous Voting Rights Act Section 2 vote dilution authorities begs the question. Section 2 does not implicate the structural nature of our representative democracy. Nor does Section 2 purport to address whether the Constitution contemplates representational or electoral equality, the question that lies at the heart of the instant controversy. Instead, Section 2 is concerned only with the dilution of minority voting power. The statute thus presupposes that the relevant analytic measure is voter-to-voter. This scarcely controls the measure for purposes of the broader

question posed under the Equal Protection Clause. *Cf. Chen v. City of Houston*, 532 U.S. 1046 (2001) (Thomas, J., dissenting from denial of certiorari).

V. The Deviation Permitted in State Districting Should Be Measured by Reference to the Permissible Population Base Chosen by the State

Under principles enunciated in *Mahan v. Howell*, 404 U.S. 1201 (1971), and *Brown v. Thomson*, 462 U.S. 835 (1983), state districts are not held to a standard of absolute population equality. Rather, minor population variations among districts are permissible. Deviations under 10% are regarded as *de minimus*, requiring no justification by the state. *E.g., Connor v. Finch*, 431 U.S. 407 (1977).

Appellants' invocation of a CVAP deviation to challenge the plan at issue is analytically faulty. The challenged plan was constructed by reference to total population. So long as a constitutionally acceptable population base is employed, logic dictates that the 10% deviation analysis be predicated on the same base as that upon which the plan itself was constructed. In *Burns*, this Court has recognized a state's freedom to select total population as its districting base. Whether the deviations in the challenged plan exceed 10% therefore also must be measured by reference to the total population base upon which the plan was drawn. Appellants' CVAP-based challenge to total population based districts is an apples-to-oranges comparison. The absolutist view that CVAP is the only permissible base for districting is contrary to the jurisprudence of this Court.

CONCLUSION

Amicus respectfully submits that this Court should affirm the decision below.

Respectfully submitted,

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APPENDIX

New York State Laws/Rules (Above and Beyond Federal Law) Providing Immigrants' NYS State Services/Rights (in addition to rights/benefits for undocumented)

Right	Description	Legal Status	Citation
Minority and Women-Owned Business Enterprise (MWBE) Certification	MWBE Certification/ Eligibility requirements	US citizen or permanent resident alien	State Law: Executive Law §310(8)- "minority group member" shall mean a US citizen or permanent resident alien who can demonstrate members in the one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America; (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

Alcohol and Beverage licenses	Eligibility for Alcohol and Beverage licenses	Aliens lawfully admitted to the US	State Law: Alcohol Beverage Control (ABC) Law §126(3) Forbids ABC licenses to any "person who is not a citizen of the United States or an alien lawfully admitted for permanent residence in the United States."
Newsstand Vendor licenses	Eligibility for Newsstand Vendor licenses	Aliens lawfully admitted to the US	State Law: General City Law §10 - Licensed blind vendor (newsstands) must be a "citizen of the United States or an alien lawfully admitted for permanent residence in the United States"

Funeral Director licenses	Eligibility for Funeral Director licenses	Aliens lawfully admitted to the US	State Law: Public Health Law §3421(2)(a) - A funeral director licensee must be "citizen of the United States or an alien lawfully admitted for permanent residence in the United States"
Teacher certification	Eligibility for Teacher certification	Various	State Law and Regulations: Education Law §3001(3): No person shall be a teacher who is "not a citizen. The provisions of this subdivision shall not apply, however, to an alien teacher now or hereafter employed, provided such teacher shall make due application to become a citizen and thereafter within the time prescribed by law shall become a citizen. The provisions of this subdivision shall not apply, after July first, 1967, to an alien teacher employed pursuant to regulations adopted by the commissioner of education permitting such employment. The citizenship requirements of this subdivision shall not apply to an alien teacher nor or hereafter employed who immigration

			status is that of a lawful permanent resident of the United States and who would otherwise be eligible to serve as a teacher, or to apply for or receive permanent certification as a teacher, but for the foregoing requirements of this subdivision." The rules appear at 8 New York Codes, Rules and Regulations (NYCRR) §80-1.3.
Teaching permits	Authorizes temporary teaching permits to noncitizens in certain instances	Alien teacher who has applied for citizenship	Education Law §3001-a - Authorizes temporary teaching permits to persons who have filed first preference petitions with Federal immigration officials but are unable to obtain lawful status due to over-subscription of a quota, upon filing of an oath to support the Federal and state constitutions.
Physician licenses	Physician licensing requirements	Holders of an H-1B Specialty Occupation visa, and O-1 visa (for Individuals with Extraordinary Ability	State Law: Education Law §6524(6) Physician license requirements include: "Citizenship or immigration status: be a US citizen or an alien lawfully admitted for permanent residence in the US;

		or Achievement), or an equivalent or successor visa thereto	provided, however, that the board of regents may grant a three year waiver for an alien physician to practice in an area which has been designated by the department as medically underserved, except that the board of regents may grant an additional extension not to exceed six years to an alien physician to enable him or her to secure citizenship or permanent resident status, provided such status is being actively pursued; and provided further that the board of regents may grant an additional three year waiver, and at its expiration, an extension for a period not exceed six additional years, for the holder of an H-1b visa, and O-1 visa, or an equivalent or successor visa thereto."
Veterinarian licenses	Veterinarian license requirements	Aliens lawfully admitted to the US with exceptions	State Law: Education Law §6704(6) Veterinarian license requirements include: citizenship or immigration status: be a US citizen or an alien lawfully admitted for permanent

		residence in the US; provided, however that the board of regents may grant a one-time three-year waiver for a veterinarian why otherwise meets the requirements of this article and who has accepted an offer to practice veterinary medicine in a county in the state which the department has certified as having a shortage of qualified applicants to fill existing vacancies in veterinary medicine, and provided further that the board of regents may grant an extension of such three-year waiver of not more than one year.
Pharmacist licenses	Pharmacist license requirements	State Law: Education Law §6805(6): Pharmacist license requirements include: "be a US citizen or an alien lawfully admitted for permanent residence in the US." For identical language see, e.g. Education Law §6955(6) midwife, Education Law §7206(6) - professional engineer. Education Law §7324(6) - landscape architect, etc.

Medicaid and safety net assistance eligibility	Makes immigrants eligible for Medicaid coverage and safety net assistance benefits	Immigrants who arrived in the US after 1996 and have Qualified Alien status or who are Permanent Residence Under Color of Law (PRUCOL)	Social Services Law §122(2)(b), (c), and (d) extend eligibility for (state-funded) Medicaid safety net assistance to immigrants who arrived in the US after 8.22.96 and have had Qualified Alien status for less than five years or who are PRUCOL (permanently residing under color or law). Safety net assistance eligibility for these statuses is also addressed in Soc. Serv. L. § 158(1)(g).
Higher Education Services Corporation awards and loans	Makes certain immigrants eligible for Higher Education Services Corporation (HESC) awards and loans	Refugees, and aliens lawfully admitted to the US	State Law: Education Law §§661(3) and 692(2)(b) authorize HESC to make awards and loans to: "(a) a citizen of the United States, or (b) an alien lawfully admitted for permanent residence in the United States, or (c) an individual of a class of refugees paroled by the attorney general of the United States under his or her parole authority pertaining to the admission of aliens to the United States." (§661 provides that the person "must be" a citizen, alien, etc., but the core wording is identical.)

Membership in NYS Conservation Corps	Requires members of NYS Conservation Corps be citizens or lawfully admitted aliens	Lawfully admitted aliens	State Law: Parks, Recreation and Historic Preservation Law §3.23(4)(i) - NYS Conservation Corps member "must be a citizen or lawful permanent resident or lawfully admitted alien."
Legal services program	Makes immigrants eligible for legal services program	Aliens lawfully admitted to the US	State Law: Public Health Law §22(1)(e)- includes "immigration" as one of the issues that the health-related legal services program will assist income-eligible New Yorkers with.
Right to be appointed to a civil service position	All aliens lawfully admitted to the US cannot be denied appointment to a civil service position	Aliens lawfully admitted to the US for permanent residence	State Law: Civil Service Law §53 - provides: "Alienage. Except as otherwise provided by law, no alien lawfully admitted for permanent residence in the United States shall be denied appointment to a position in the competitive class of civil service for reasons of alienage."

Human trafficking law enforcement	Requires state and local law enforcement agencies to cooperate and provide human trafficking victims with citizenship forms	Victims of human trafficking	State Law: Social Services Law §483-dd - requires state and local law enforcement agencies to cooperate with human trafficking victims by providing an endorsement on a US Citizenship and Immigration Service form that the individual was a victim of human trafficking.
Protects immigrants' documents	Makes it illegal - an element of the crime - to take away or destroy an immigrant's documents	All immigrants	State Law: Penal Law §§135.35 and 230.34 - include withholding or destroying an individual's immigration documents within the elements of the crimes of labor trafficking and sex trafficking.

NYS Rights for Undocumented Immigrants (Above and beyond Federal Law)

Right	Description	Legal Status	Citation
Child Health Plus	NYS health care program for uninsured children under 19 who are ineligible for Medicaid	Undocumented children	State Law: Public Health Law §2511 extends eligibility to all NYS residents - state resources must be used to cover services to undocumented children who do not meet the citizenship requirements of Title XXI of the Social Security Act
Medicaid	Medicaid for recipients of Medicaid as of 8/4/97, who were living in residential health care facilities or residential facilities licensed by state Office of Mental Health (OMH) or state Office of Mental	Undocumented persons living with AIDS (persons living with AIDS - PLWAs) and nursing home residents before 1997	State Law: Social Services Law §122(c) provides that undocumented persons are eligible for safety net assistance and for Medicaid, except that Medicaid is limited to (l) treatment of emergency medical conditions or (2) full Medicaid coverage for undocumented persons living with AIDS or those residing in residential health care facilities or OMH or OMRDD residential facilities, provided such persons were receiving Medicaid as of 8/4/97 based on a finding at that time that he/she was residing

	Retardation/ Developmental Disabilities (OMRDD)		under color of law. Social Services Law §364-i establishes presumptive eligibility without reference to immigration status, but expands Medicaid for treatment of breast, cervical, colon and prostate cancer and for pregnant women with state funds only - as a result NYS does not apply Federal exclusions of undocumented. Public Health Law §2530-a creates pre-natal care assistance program for all pregnant women eligible for Medicaid, including those eligible pursuant to Social Services Law §364-i.
Medicaid	Medicaid for people living with AIDS and living in residential health care facilities (recipients of Medicaid as of 8/4/97, who were also diagnosed with AIDS)		
Medicaid	Medicaid - Emergency Indigent Health Care	Undocumented	

Pre-natal Care Assistance Program/ Medicaid for Pregnant Women	Health coverage for pregnant women and limited treatment for cancer patients	Undocumented pregnant women and cancer patients	
Protective services, foster care and residential services	Right to protective services, foster care and residential services for domestic violence victims	Undocumented	State Law: Social Services Law §398-e provides that an alien, including a non-qualified alien under federal law, is eligible for protective services for adults and children, foster care services and residential services for victims of domestic violence.
Access to in-state tuition	Right to in-state tuition rates	Undocumented	State Law: Both State University of New York (SUNY) (Education Law §355(h)(8)) and City University of New York (CUNY) (Education Law §6206(7)(a-l)) provide that undocumented persons who attended and graduated from NYS high schools are eligible for in-state tuition. Education Law §6301(5)

			sets forth similar qualifications to be deemed a "resident" for purposes of community college attendance.
Access to K-12 education	Access to K-12 education without requiring social security number or disclosure of immigration status	Undocumented children	Based on Federal case law and Federal and NYS laws, the State Education Department (SED) requires that all children of school age, regardless of immigration status, are subject to compulsory education requirements. Education Law §305(9) provides that SED shall obtain a list of "alien children of school age" and provide this information to school boards for the purposes of compulsory education. SED has adopted rules at 8 New York Codes, Rules and Regulations (NYCRR) §100.2(y) that prescribe flexible enrollment and documentation requirements that, in SED's words, have "prohibited enrollment application policies which are unlawful and/or have had a disparate impact on unaccompanied minors and

			undocumented youth." These rules are currently in effect on an emergency basis and proposed for permanent adoption.
Women, Infants, and Children Program (WIC)	WIC for pregnant women, women who gave birth and are nursing, infant or young child, at risk of health problems because of lack of food, low-income	Undocumented	Federal and State Laws: Federal U.S. Department of Agriculture regulations for the Women, Infants & Children (WIC) nutrition program at 7 Code of Federal Regulations (CFR) §246.7(c)(3) allow states to limit participation to citizens and qualified aliens. NYS has not elected to do so in its state plan.

NYS Rights for Undocumented Immigrants (Above and beyond Federal Law)

Right	Description	Legal Status	Citation
Empire State Child Tax Credit (state)	A federal and state income tax credit for families with children who qualify.	Anyone who qualifies	Federal and State Laws
Domestic Worker Bill of Rights	Rights for Domestic Workers	Not explicitly undocumented immigrants	State Law: Chapter 481 of the Laws of 2010
School Meals	School Meals (Breakfast and Lunch)	Anyone who qualifies	Federal
Summer Meals	School Meals (Breakfast and Lunch)	Anyone who qualifies	Federal/NYC: [From NYC website. Unverified as being statewide right for undocumented immigrants.]

Commodity Supplemental Food Program (CSFP)	Food for low-income, pregnant women, young children and seniors. Immigration status does not matter, but cannot also be on WIC.	Anyone who qualifies	[From NYC website. Unverified as being statewide right for undocumented immigrants.]
Head Start	Free educational programs for eligible children fiom birth to age five, family support services.	Immigration status does not matter. Children from families receiving Cash Assistance or Supplemental Security Income (SSI) automatically qualify.	[From NYC website. Unverified as being statewide right for undocumented immigrants.]
Prekindergarten	Universal Prekindergarten	Anyone who qualifies	[From NYC website. Unverified as being statewide right for undocumented immigrants.]

Out-of-School Time (OST)	Free, educational and other programs for young people after school, on holidays, and in the summer. Immigration status does not matter.	Anyone who qualifies	[From NYC website. Unverified as being statewide right for undocumented immigrants.]
Healthy NY (working individuals)	Unless you are also a lawfully residing immigrant	Anyone who qualifies	[From NYC website. Unverified as being statewide right for undocumented immigrants.]
Family Planning Extension Program (FPEP)	Up to 26 months of family planning services for women who were on MA while pregnant but lost coverage after pregnancy.	Anyone who qualifies	[From NYC website. Unverified as being statewide right for undocumented immigrants.]

Nurse Family Partnership	Free program for women having first baby. Nurses visit throughout pregnancy and until baby is two, regardless of immigration status.	Anyone who qualifies	[From NYC website. Unverified as being statewide right for undocumented immigrants.]
Public Housing	As long as one (1) person in the household is a U.S. citizen or a qualified immigrant, the household can apply but the benefits are less.	Anyone who qualifies	[From NYC website. Unverified as being statewide right for undocumented immigrants.]

Section 8 Housing Assistance	As long as one (1) person in the household is a U.S. citizen or a qualified immigrant, the household can apply but the benefits are less.	Anyone who qualifies	[From NYC website. Unverified as being statewide right for undocumented immigrants.]
Right to hold title to property	Right to hold title to property	Alien	State Law: Real Property Law §15
Hospital Financial Assistance	Right to access hospital financial assistance	All	Administrative: [From NYC website. Unverified as being statewide right for undocumented immigrants.]
Drivers' Licenses	Access to Drivers' Licenses	DACA (Deferred Action for Childhood Arrivals) beneficiaries	Administrative